



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

[Home](#) > Memorandum of Decision Re: Administrative Expense

Monday, August 27, 2001
UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

DO NOT PUBLISH This case disposition has no value as precedent and is not intended for publication. Any publication, either in print or electronically, is contrary to the intent and wishes of the court.

In re



MARC and DENISE THORPE,

No. 98-11963

[Debtor](#)  (s).

_____/

Memorandum on Objection to Administrative [Claim](#)

When this [Chapter 11](#)  case was filed, debtor Marc Thorpe was locked in litigation with [creditor](#)  Profile Records, Inc. In 1994, Thorpe had entered into an agreement with Profile to form a joint venture for the formation of Robot Wars LLC ⁽¹⁾ to pursue an idea Thorpe had come up with for "Robot Wars," a kind of mechanical cock-fight. Under the agreement, Profile would supply the capital necessary to produce the games. Each would have a 50% ownership interest in the joint venture. Thorpe and the owner of Profile, Steven Plotnicki, proved to be very incompatible and relations between them quickly deteriorated. Among other things, Plotnicki proved to be extremely litigious and brought suit against some of the contestants, an action strongly opposed by Thorpe. When Thorpe filed his Chapter 11 petition commencing this bankruptcy case, a lawsuit between Profile and Thorpe was pending in

district court. In the Chapter 11 proceedings, it became apparent that Thorpe could not confirm a [plan](#) over the objection of Profile, which filed several claims. At the urging of the court, the parties entered into a settlement whereby Profile, now known as Profile Holdings, Inc., would control Robot Wars and Thorpe would be entitled to certain royalty payments. Steven Plotnicki signed the settlement agreement three times: on behalf of Profile, on behalf of Robot Wars, and on his own behalf. When Thorpe did not receive his initial payment under the agreement, he commenced suit. He named only Profile as a [defendant](#). Profile filed a counterclaim against Thorpe, alleging that he had breached the settlement agreement so that Profile was entitled to withhold payment and was entitled to damages. After trial, the court found that Thorpe had not performed as agreed and was therefore not entitled to all of the payments under the agreement. However, the court also found that by its litigiousness Profile had alienated many of the competitors and caused most of the damages it laid at Thorpe's feet. The case takes a strange turn thereafter. Plotnicki decided that since Robot Wars had not been named as a defendant by Thorpe he was free to sue Thorpe outside of bankruptcy court in Robot Wars' name on exactly the same counterclaims that he had raised on behalf of Profile. The court enjoined prosecution of that lawsuit. Robot Wars then filed, on July 26, 2001, a document entitled "Notice of Administrative Claim." In it, it asserts that it has an administrative claim against the [bankruptcy estate](#) but that it has the right to litigate that claim by jury outside the bankruptcy court. Thorpe objects. There is a very fundamental flaw in Robot Wars' position. The *only* way a claimant can get money from a bankruptcy estate is by filing a [proof of claim](#). The act of filing a claim submits the claimant to the equitable jurisdiction of the bankruptcy court, waiving any right to a jury. Katchen v. Landy, 382 U.S. 323, 86 S.Ct.467, 15 L.Ed.2d 391 (1966). As the court noted in In re Simon, 153 F.3d 991, 997 (9th Cir. 1998):

When a creditor submits to bankruptcy court jurisdiction by filing a proof of claim in order to collect all or a portion of a debt, it assumes certain risks. For example, the creditor loses the right to a jury trial on any counter-claims filed by the debtor or the [trustee](#). See Langenkamp, 498 U.S. at 44-45, 111 S.Ct. 330. In addition, the creditor loses previously-held rights to assert "legal claims" against the debtor and his estate; bankruptcy "converts the creditor's legal claim into an equitable claim to a pro rata share of the res." Katchen, 382 U.S. at 336, 86 S.Ct. 467. By acceding to bankruptcy court jurisdiction so that it might recover a portion of the money it was owed, [the claimant] forfeited any right it had to claim that the court lacked the power to enjoin [the claimant] from commencing a post- bankruptcy collection proceeding against the debtor. Clearly, [the claimant's] participation in the bankruptcy subjected it to the court's [discharge](#) order pursuant to 11 U.S.C. § 524. A sanction for violating that order is not an improper extraterritorial application of United States laws.

See also In re Conejo Enterprises, Inc., 96 F.3d 346, 354 n. 6 (9th Cir. 1996). Moreover, the filing of a proof of claim waives the right to a jury not only as to the filer itself but also any controlled instrumentality. In re Corey, 892 F.2d 829, 836-37 (9th Cir. 1989). Robot Wars is controlled by Profile (now called Astor Holdings, Inc.), which has filed numerous claims in this case. Neither it nor Robot Wars is entitled to have its claims against the estate heard by a jury. In the [adversary proceeding](#), Profile's counterclaim sought to recover exactly the same damages as Robot Wars now seeks in its stayed lawsuit and putative administrative claim. Profile's witnesses put on testimony as to Robot Wars' alleged lost profits. Robot Wars' claim has thus already been fully adjudicated by this court. The conclusion the court reached is that Profile has no administrative claim, and is entitled only to a reduction in the amount of royalties Robot Wars must pay to Thorpe under the settlement agreement. Accordingly, the

court will sustain Thorpe's objection and disallow Robot Wars' administrative claim, without prejudice to reconsideration if this court's judgment is modified on appeal.⁽²⁾ An appropriate form of order will be entered.

Dated: August 27, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

1. The names in this case can be a little confusing, as Profile has changes its name twice. As used in this memorandum, "Profile" means Profile Records, Inc. which changed its name first to Profile Holdings, Inc., and then to Astor Holdings, Inc. "Robot Wars" means Robot Wars, LLC.

2. Profile appealed the judgment to the district court, which affirmed the substance of the court's ruling but remanded the finding of damages for a clearer explanation. There is no way that the remanded issue will result in an administrative claim for Profile, which has appealed the district court decision to the Circui

Source URL (modified on 11/04/2014 - 10:51am):

<http://www.canb.uscourts.gov/judge/jaroslovsky/decision/memorandum-decision-re-administrative-expense>